IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 637 OF 2003

Bhupal Basgonda Patil .... Appellants
(deceased through his LRs) (Ori. Defendants)
Smt. Jayawanti Bhupal Patil
& Ors.

Vs.

Sou. Malubai Nemgonda Patil .... Respondents
& Anr. (Ori. Respondents)

Mr. A.A. Kumbhakoni for the Appellants.
Mr. Shriniwas Patwardhan for Respondent Nos. 1 & 2

CORAM : A.S. OKA, J.
DATE : 13TH JULY, 2007

P.C.

1) Submissions of the learned Counsel appearing for the parties are heard.

2) The present Second Appeal has been preferred by the original defendants who are the legal heirs of one Bhupal Basgonda Patil. It will be necessary to refer to the relationship between the parties. According to the case made out by the Plaintiffs, one Sarsabai was the owner of the suit properties bearing survey Nos. 98/1 and 141/1. The Name of the husband of Sarsabai was Basgonda. The said Sarsabai died in the year 1949. She had a daughter by the name Chingubai, who died on 1st

July 1968. Her husband Anna died on 9th March 1967. Bhupal and Jaipal are the two sons of the deceased Chingubai. Jayawanti is the widow of Bhupal. The plaintiffs are the daughters of Chingubai. The original defendant Nos. 1-B, 1-C and 1-D are the sons and daughter respectively of Bhupal. Jaipal died on 9th June 1966 and he was a bachelor at the time of his death.

3) On 31st July 1947, the said Sarsabai executed a gift in respect of land bearing survey no. 98/1 in favour of her grand-son Jaipal. On the very day, Sarsabai made a Will by which she made a bequest of half share in land bearing survey no. 141/1 in favour of her daughter Chingubai and her son in law. The said Sarsabai adopted Bhupal on the same day i.e. on 31st July 1947.

4) After the demise of Sarsabai, half portion of land bearing survey No. 141/1 came in actual possession and cultivation of Chingubai and her husband Anna. On 20th September 1966, Chingubai’s husband Anna made a Will and bequeathed half portion of the land bearing Survey No. 141/1 in favour of deceased Bhupal. On the death of Sarsabai, the said Chingubai being the only legal representative, claimed to have become the owner of

the other half portion of land bearing Survey no. 141/1.

5) According to the case made out by the Plaintiffs, Chingubai during her lifetime did not alienate her half portion of land bearing Survey no. 141/1 to anybody, but she had only allowed Bhupal's name to be entered in the revenue record. In the suit filed by the respondents, they exclusively claimed survey no. 98/1 being the only legal representative of the deceased Jaipal. They claimed half portion of land bearing Survey no. 141/1 held by Chingubai.

6) The defence of the defendants was that half portion of Survey No. 141/1 belonging to Chingubai was given by her to deceased Bhupal with consent of all concerned persons and while making a Mutation Entry in the name of Bhupal, the respondents-plaintiffs have orally relinquished their share. In the alternative, it was contended that Bhupal was in possession of the suit lands from the year 1963 as a tenant.

7) The learned Trial Judge held that the Will dated 31st July 1947 executed by Chingubai has been proved and the gift deed executed on the same day

is legal and valid. The learned Trial Judge referred to issue of tenancy decided by the competent authority and held that Bhupal cannot

claim tenancy. The learned Trial Judge, therefore, held that the respondents- plaintiffs were entitled to possession of Survey No. 98/1 being the only legal representatives of Jaipal and the respondents were having 1/4th share each in survey no. 141/1. The Trial Court also held that the remaining half share was owned by the legal representative of Bhupal.

8) The learned Counsel appearing for the Appellants submitted that the Courts below have committed an error by ignoring the fact that on 31st July 1947, Bhupal became adopted son of Sarsabai. He submitted that the respondents have failed to establish that Sarsabai acquired the suit property on the basis of a bequest and therefore the suit property cannot be a stridhan property of Sarsabai. He, therefore, submitted that in absence of will in favour of Sarsabai, the Courts have erroneously proceeded on an assumption that Sarsabai was the exclusive owner of the suit property. He,therefore, submitted that the decree

passed by the Trial Court is erroneous.

9) I have considered the submissions. It is not explained by the Appellants as to how during the lifetime of deceased Chingubai, the said Bhupal became entitled to one half share in the property bearing survey no. 141/1 held by Chingubai. It was found by the Courts below on evidence that in the Will dated 31st July 1947 and in the gift deed of the same date, there were clear recitals that the said Sarsabai acquired the suit properties as a stridhan. Moreover it is the case of the Appellants that during the life time of the deceased Chingubai, she gave 1/2 share in the land bearing survey no. 141/1 to the said Bhupal and therefore, the said Bhupal became the owner of 1/2 share. The said Chingubai became the owner of one half share being the heir of Sarsabai. Therefore, merely because the Will in favour of Sarsabai is not proved, it cannot be said that Sarsabai was not the owner of the property. The Courts below have concurrently found that Sarsabai made a gift of land bearing Survey no. 98/1 in favour of Jaipal. The Courts below have also negatived the case of the Appellants that there was an oral relinquishment by the Respondents of their share in land bearing Survey no. 141/1. The plea of

tenancy of Bhupal has been negatived by the tenancy Court.

10) Considering these findings of fact recorded by the Courts below, no substantial question of law arises. Accordingly, Second Appeal is dismissed with no order as to costs.

(A.S. OKA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 936 OF 2003

IN

SECOND APPEAL NO. 637 OF 2003

Bhupal Basgonda Patil (deceased through his LRs) Smt. Jayawanti Bhupal Patil & Ors. .... Appellants (Ori. Defendants)

Vs.

Sou. Malubai Nemgonda Patil & Anr. .... Respondents (Ori. Respondents)

Mr. A.A. Kumbhakoni for the Appellants.
Mr. Shriniwas Patwardhan for Respondent Nos. 1 and 2.

CORAM : A.S. OKA, J.
DATE : 13TH JULY, 2007

P.C.

1) In view of dismissal of the Second Appeal, application does not survive and hence, it is rejected.

(A.S. OKA, J.)